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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

TERRY DOUGLAS CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001845

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
-VS-)
TERRY DOUGLAS CAMPBELL,)
DEFENDANT.)

2012-GS-23-02101

JANUARY 16, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JENNIFER TESSITORE, ESQUIRE
ATTORNEY FOR THE STATE

SARAH HENRY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

No	DESCRIPTION	ID	EV
	(NONE)		

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1

January 16, 2013

2

(WHEREUPON, court convened with all parties present

3

and the following proceedings were had.)

4

THE CLERK: Your Honor, this is case number

5

2012-GS-23-2101, Terry Douglas Campbell. Indictment for

6

burglary first degree, pleading to burglary second

7

degree violent. It is a true bill.

8

Would you raise your right hand? Do you swear or

9

affirm to tell the truth, the whole truth and nothing

10

but the truth, so help you God?

11

THE DEFENDANT: Yes, I do.

12

THE CLERK: Thank you.

13

THE COURT: Ms. Henry, you represent Mr.

14

Campbell in this matter?

15

MS. HENRY: I do, Your Honor.

16

THE COURT: Have you had an opportunity to

17

talk with your client about the charges pending against

18

him, the possible punishments he faces and his

19

Constitutional rights?

20

MS. HENRY: Yes, Your Honor.

21

THE COURT: Do you believe he understands the

22

discussions you've had with him?

23

MS. HENRY: I do.

24

THE COURT: Have you reviewed with your client

25

all the State's evidence?

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1 MS. HENRY: Yes, Your Honor.

2 THE COURT: And based upon your investigation
3 of all the facts and circumstances, do you believe the
4 State could meet its burden of proof and convince a jury
5 beyond a reasonable doubt of his guilt of this charge?

6 MS. HENRY: Yes, Your Honor.

7 THE COURT: Mr. Campbell, how old are you,
8 sir?

9 THE DEFENDANT: I'm fifty, Your Honor.

10 THE COURT: Are you married, sir?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: Do you have children?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: How many children do you have?

15 THE DEFENDANT: I have two, sir.

16 THE COURT: And how old are your children?

17 THE DEFENDANT: Thirteen and fourteen, Your
18 Honor.

19 THE COURT: Where did you last work?

20 THE DEFENDANT: I worked for Baumuller.

21 THE COURT: How long was it you worked there?

22 THE DEFENDANT: About a year and a half ago.

23 It's a company out of Norcross, Georgia.

24 THE COURT: What do you do?

25 THE DEFENDANT: I'm a journeyman millwright,

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1 sir.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: I graduated high school and
4 have two years of college, Your Honor.

5 THE COURT: Where did you finish high school?

6 THE DEFENDANT: At Burns High School in
7 Duncan, South Carolina.

8 THE COURT: Have you ever been treated for
9 alcohol or drug abuse?

10 THE DEFENDANT: Approximately twenty years
11 ago, Your Honor.

12 THE COURT: Was that inpatient or outpatient?

13 THE DEFENDANT: It was inpatient, Your Honor,
14 at Faith Home in Greenville, South Carolina.

15 THE COURT: Did you complete the program?

16 THE DEFENDANT: Yes, sir, I did.

17 THE COURT: Do you have any prescriptive drugs
18 or other substance in your body today?

19 THE DEFENDANT: No, sir, Your Honor. I've
20 been locked up eight months.

21 THE COURT: This indictment that I have states
22 that on or about February the 21st of 2012, you
23 unlawfully entered property belonging to the Moon Bar on
24 Reid School Road in Taylors without consent with the
25 intent to commit a crime therein. This is a burglary in

1 the second degree violent that you're pleading to. Is
2 that correct? Is that what you're here to plead to?

3 THE DEFENDANT: That's correct. I mean, I
4 heard her mention a first. It was never a first. I
5 don't know why that was mentioned.

6 THE COURT: All right. Solicitor, I'll be
7 glad to hear about the facts of the case.

8 MS. TESSITORE: May it please the Court, Your
9 Honor. On February 21st of 2012, at about three twenty
10 in the morning, while a sergeant with the Greenville
11 County Sheriff's Office was sitting eating his lunch
12 because of the night shift, he was seated -- he had
13 parked his vehicle in such a position out on -- off of
14 Reid School Road at the intersection of Hillside, Reid
15 School Road and Wade Hampton, such that he could see
16 this Defendant drive up in his pickup truck and drive up
17 to the back of the Moon Bar and back in, in a place
18 where he would less easily be seen.

19 The sergeant then saw him walk towards a liquor
20 store across the street, a little liquor store that's
21 right there, and walk around the building and check the
22 doors, and then went back over to the Moon Bar where his
23 truck was parked, and he then saw him checking out the
24 doors at the Moon Bar. He saw that there was a
25 flashlight or he was attempting to look inside. He

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1 called backup units, and by the time they got there, the
2 Defendant had already cut off the lock on an outbuilding
3 that's connected to the bar there and had removed some
4 copper wiring, put it in the bed of his truck. Took
5 some empty cans that were thrown to the side there and
6 put those in his truck. He then used a screwdriver to
7 remove a wall panel on the bar itself and causing a
8 large rectangular opening where he then squeezed through
9 the opening, got into the bar, gathered what he was
10 about to take, which was a twelve pack of Bud Light and
11 four liquor bottles and looks like three cartons of
12 cigarettes that were all set up as his loot that he was
13 going to take. But then the officers arrived on the
14 scene. They shone the flashlights into the business.
15 At that point he realized that he was caught and he
16 opened the door and they asked him what he was doing,
17 and he said, no good.

18 He was then Mirandized. He admitted that he was
19 there to steal scrap metal, get money and liquor and
20 whatever else he could find, and that he had no consent
21 to be there. They did confirm with the owner of the
22 bar, who came to the property, that he did not give
23 permission to Mr. Campbell to be there. Obviously, from
24 the circumstances, that could also be inferred.

25 He does have -- he was found to be in possession of

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1 a screwdriver, a pocket knife and a flashlight as the
2 tools that he used to gain entry.

3 And he has nine prior property convictions and five
4 prior burglaries, which enhance this from a burglary
5 second nonviolent to violent, Your Honor.

6 THE COURT: You heard the facts surrounding
7 this particular incident, Mr. Campbell. Are those
8 substantially the facts to which you're pleading today?

9 THE DEFENDANT: I heard what she said. I'd
10 like to tell you what actually happened if you don't
11 mind.

12 THE COURT: All right. I'll give you a
13 chance, but did you substantially do what she said, in
14 that you broke into ---

15 THE DEFENDANT: Correct, Your Honor.

16 THE COURT: --- property?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: You did burglarize the property?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: All right. And I'll be glad to
21 hear from you later. You understand that by entering a
22 plea of guilty, you're giving up substantial rights you
23 enjoy. You have a right to have a trial by a jury. A
24 jury could be empaneled and the State would have to
25 prove your guilt beyond a reasonable doubt, since you

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1 would be presumed innocent, you could remain silent
2 through the entire proceedings. You could challenge the
3 evidence the State tries to offer. You could confront
4 witnesses against you and let your lawyer examine them
5 under oath. You could challenge the evidence. You
6 could bring witnesses in your own behalf if you wanted
7 to put up a defense.

8 You have these and other rights, but you give all
9 those up by pleading guilty. Do you understand that?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: And you want to give those rights
12 up and plead guilty?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Are you satisfied with the
15 representation your lawyer has provided you?

16 THE DEFENDANT: Yes, sir, I am, sir.

17 THE COURT: Has she done everything to defend
18 you that you've asked her to do?

19 THE DEFENDANT: More or less, Your Honor.

20 THE COURT: Have you met with her as often and
21 as long as you feel necessary?

22 THE DEFENDANT: I have, Your Honor.

23 THE COURT: And have you understood the
24 discussions you've had with her?

25 THE DEFENDANT: Yes, sir, I have.

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1 THE COURT: Do you have any complaints
2 whatsoever about her representation?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: Is there any recommendation from
5 the State?

6 MS. TESSITORE: No, Your Honor. This is a
7 case off of the trial docket tomorrow, and he only just
8 indicated that he wished to plead guilty late yesterday.
9 And Ms. Henry was able to get him here today to plead
10 him on the eve of trial.

11 THE COURT: Has anyone threatened you to get
12 you to plead guilty today, Mr. Campbell?

13 THE DEFENDANT: No, Your Honor, they haven't.

14 THE COURT: Has anybody promised you anything
15 by way of reward or otherwise to entice you to plead
16 guilty?

17 THE DEFENDANT: No, Your Honor, they haven't.

18 THE COURT: Do you realize that you could be
19 sentenced up to fifteen years in jail for this charge?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Are you pleading guilty then of
22 your own free will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you doing so because you are,
25 in fact, guilty?

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1 THE DEFENDANT: Correct, Your Honor.

2 THE COURT: Have you understood all the
3 questions I've asked?

4 THE DEFENDANT: Yes, sir, I have, Your Honor.

5 THE COURT: Have you been truthful in your
6 answers to me?

7 THE DEFENDANT: Yes, sir, very truthful, Your
8 Honor.

9 THE COURT: The law gives you a right, if you
10 meet our Appellate Court rules, to appeal this
11 proceeding within ten days, and if you can't afford an
12 attorney, one could be appointed for you. Do you
13 understand that?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: I find there is a substantial
16 factual basis for the plea, that it has been freely,
17 voluntarily, knowingly and intelligently made by Mr.
18 Campbell, with the advice of competent legal counsel,
19 with whom he's expressed his satisfaction. I will
20 accept your plea.

21 Certainly be glad to hear from you, be glad to hear
22 from your attorney.

23 MS. HENRY: Thank you, Your Honor. I just
24 want to give you a little background on Terry first. He
25 grew up in Lyman, South Carolina. The majority of his

1 family is still there. That's been his base the
2 majority of his life. As you heard, he's an educated
3 man. He spent two years in college at Spartanburg Tech.
4 He got a degree in drafting from there back in 1983 and
5 1984. He's been using that degree ever since. He's
6 been a millwright journeyman or journeyman millwright
7 for about twenty years. So he drafts and installs
8 machinery. I think his specialty is production plants.
9 And he's worked for a lot of large companies, Clarkson
10 Industrial, and through them, I think BMW, Renfro
11 Company, Baumuller. I think this is the longest he's
12 ever been out of work. He's been in and out of -- been
13 out now for about a year and a half, almost two years.
14 He's very, very proud of his work, the work that he
15 does. And from what -- he's told me about job offers
16 he's received even recently. So he's very good at his
17 job. He has a current job offer right now with a
18 company in Virginia. I believe he's told me that the
19 work hours there would be about a forty hour work week.
20 Because of the way he does the work, he gets -- it's not
21 seasonal, but it would be for like a period of time,
22 like four months, they would schedule him for a
23 particular job.

24 He also believes that he would be able to go back
25 to Clarkson Company and through them BMW and work

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1 locally for them. When working there he does work about
2 eighty to a hundred hours a week when he's on a
3 particular job with that particular company.

4 Even more personally, he's very close to his
5 elderly parents. They're seventy-two and seventy-four,
6 respectively. His mother has been in touch with my
7 office quite a bit in relation to Terry and what's going
8 on with his case. And she has written a letter to you,
9 through me, and I think she might have actually called
10 your office and left a message as well.

11 THE COURT: I believe we got that message.

12 MS. HENRY: Did you? She's ---

13 THE COURT: Is she suffering from cancer now?

14 MS. HENRY: She is. His father is also a
15 diabetic and he was just recently diagnosed with heart
16 difficulties on top of the diabetes. They're both on
17 social security and retired. And I believe they depend
18 quite a bit and emotionally on Terry, especially when
19 he's working, to help out with all that stuff,
20 especially medications.

21 From what Terry's mother has said, and what Terry
22 has told me, pretty much from the very beginning, he's
23 been in a really destructive pattern. I know that
24 Jennifer mentioned that he had a record of property
25 offenses. I mean, that's true and Terry knows that.

1 What seems to be the pattern from what he's told me and
2 what his mother has said, is that he works very hard
3 when he's working and he gives a lot of money to his
4 parents. And then what happens, when he's living on
5 just the per diem, he tends to blow the rest when he's
6 not on the job, because he's got long periods of hiatus
7 where he's not working between his stints. And then
8 he's -- during this particular time he has a
9 functional/nonfunctional drug problem where he's fine
10 when he's working and when he's off, he gets in scrapes
11 like this. And what he does is he goes around and he
12 scrapes, and like in between this -- when he finally runs
13 out of money. And I believe that's what he was doing
14 this evening. From what he's said, a lot of times it's
15 easier to find cans and other scrap metals and things
16 like that around liquor stores or bars, because they
17 throw them out and don't think about them. And he said
18 that when he was there that night that he had used drugs
19 and was scraping and he had been by that bar before and
20 taken cans and things like that. And he said that the
21 bar was empty. He was there late, I think at three p.m.
22 And no one lived there ---

23 THE COURT: Three a.m.

24 MS. HENRY: Three a.m., I apologize, yes.

25 Thank you, Your Honor. And when he said that no one was

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1 there and saw that there was, you know, loose paneling
2 -- I don't know if you've ever been to the Moon Bar,
3 it's a very -- it's not like a regular building. I
4 mean, it is, but it's got like wood paneling on the
5 outside and a very thin like kind of insulation and then
6 you're right into the bar. And he saw that the paneling
7 was loose there and made a really bad decision to go in
8 there.

9 What Terry told you before, he has been in rehab
10 back in 1993. And he did very well for a time after
11 that. Since then I think his life has been gradually
12 getting worse because of drugs. And recently,
13 obviously, it's completely imploded. I think he's
14 terrified of losing his parents while he's in jail. And
15 I think he feels incredibly guilty for what happened
16 with the Moon Bar, and what it's done to his parents, in
17 particular, that they're in their seventies and they're
18 worrying about this.

19 I know that he is on the trial docket, but he is
20 taking responsibility for this and he is pleading
21 guilty. And he has offered, on his own, to pay whatever
22 restitution is necessary. I don't know that there's a
23 restitution order that we've got one right now, but he
24 has been very cooperative with that, and definitely
25 wants to pay any restitution that's there.

1 He was very cooperative with the officers. And his
2 family is very supportive. Like I said, I've got a
3 letter from her. I don't know if you want to hear that.
4 And he is working with a pastor, Ted Duncan. I think
5 he's been in Spartanburg Detention for two hundred and
6 -- more than two hundred and thirty-three days, and I
7 think he's been working with Pastor Duncan there, who
8 has offered to help him when and if he gets out of jail
9 for that.

10 Terry is asking for help. He would ask you to
11 consider -- he would ask you to be as lenient as
12 possible. That he could do home incarceration. And
13 that he is more than confident he could do probation as
14 long as there was some kind of rehab involved with that.
15 And he would just ask you to consider that.

16 THE COURT: All right. Thank you, Ms. Henry.

17 Mr. Campbell, anything you want to tell me?

18 THE DEFENDANT: Yes, sir, there is, Your
19 Honor. First I'd like to tell you what went on that
20 night. I know the statements say they caught me in the
21 bar. No one caught me in the bar. I was in the bar.
22 I'm not trying to lie about that. I was in the bar. I
23 seen them pull up. I went around there and talked to
24 them and told them I had a bad drug problem and asked
25 them for help. None of that was mentioned in that they

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1 -- what the statement said. But I went to them
2 thinking, you know, they could probably help me with my
3 drug problem. Nobody's ever mentioned that. I went to
4 prison twice, both times went to work release. I've
5 never, ever gotten any help for no drug problem.

6 THE COURT: Faith Home didn't give you help?

7 THE DEFENDANT: Faith Home, I stayed in there
8 ninety days, Your Honor. They did give me help.

9 THE COURT: Okay.

10 THE DEFENDANT: They did give me help. Since
11 I've been incarcerated, I have got with Pastor Duncan
12 and become a Christian. I turned fifty while I was
13 locked up. And I realize that my mom and dad don't have
14 a whole lot of time left. And I'm ashamed to admit it,
15 but I've put them through a lot. And they've always
16 been there for me, cared for me. And I want the
17 opportunity to keep helping them. I help them buy
18 medication and medical supplies.

19 I have two groups of friends, Your Honor. One
20 group of so-called friends that I got high with. You
21 could ask them about me and they would probably tell
22 you, you know, he just wants drugs and he'll do
23 whatever. If you ask the people I work with, they would
24 tell you that he's probably the most dependable,
25 hardworking man, and very good at my job. I could

1 pretty much talk to a superintendent and have a
2 millwright job in five minutes, just from him basing it
3 on what he hears me telling him, knowing that I know
4 what I'm doing.

5 I would like to have some help with drugs, sir.
6 And what I'm asking is if I was given time that you
7 would please allow me to do it at home on house arrest.
8 And I want -- like I told you over and over, I want
9 help, Your Honor. And when I was locked up, I do not do
10 anything, because I know there's stipulations if I got
11 caught with drugs or whatever. The work release says if
12 you got caught with drugs, you got an extra six months.
13 Knowing that I would not touch them. I have been
14 offered them at work before, because I work on a street
15 job when I was at the workplace.

16 I would have no problem paying for the ankle
17 monitor or whatever. But if I were given that, I would
18 like to ask you that you make some serious consequences
19 if I did mess up. I want something to -- I know it's
20 easy for me to say when I'm locked up, but when you get
21 back out there, it's a whole lot harder to do than what
22 you -- every intention you have. And I'd like there to
23 be serious consequences if I did mess up. And I would
24 like to have, if I was permitted to go on a monitor, one
25 that would monitor if I got around a drug area or got

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1 any drugs or alcohol in my system.

2 THE COURT: All right. Thank you, sir.

3 THE DEFENDANT: Thank you, Your Honor.

4 THE COURT: Has the victim been notified?

5 MS. TESSITORE: Yes, Your Honor. Actually the
6 owner of the Moon Bar died just before Christmas. We
7 were in contact with him. And he and his wife co-own
8 the bar and they've subsequently sold it, since his
9 sudden death from cancer. And so we're not actually
10 seeking restitution in this case, Your Honor.

11 We do have a position and also his prior record to
12 share with you.

13 THE COURT: Is there more than the nine
14 property offenses?

15 MS. TESSITORE: Yes, Your Honor. And I think
16 it's important for the Court to know that his record
17 spans back to 1979, beginning with a shoplifting; 1990,
18 a DUS, two counts of burglary, third degree.

19 THE COURT: 1990?

20 MS. TESSITORE: 1990. Sorry. 1994, two
21 counts of burglary third degree in Spartanburg County.
22 In Georgia in 1995, theft by shoplifting times two,
23 false information to police, trespassing and violating
24 his probation. In 1999, back in South Carolina, grand
25 larceny. 2002, he had two counts of burglary third

1 degree, one of which had been reduced from burglary
2 second degree nonviolent, involving a church and a
3 restaurant. And then in 2007 -- I'm sorry, possession
4 of a stolen motor vehicle over five thousand dollars,
5 which was also in 2002, and a violation of probation.
6 In 2007, three counts of fraudulent check over five
7 hundred dollars and failure to stop for a blue light.

8 Your Honor, in addition, those are his prior
9 convictions and we have certified copies of those if you
10 wish to look at those. But in addition, I think the
11 Court should know that he was in jail for six days as a
12 result of this. He was out on bond and after this
13 incident he was picked up on Spartanburg County charges,
14 one of which the offense date is alleged to be two
15 months after this incident. Also a burglary second
16 degree and grand larceny. And then he was charged with
17 another burglary and grand larceny from November of
18 2011. Those charges are pending. That's why he's in
19 Spartanburg County at this time. He also has a pending
20 shoplifting and I think -- I don't recall, some other
21 minor charge.

22 Your Honor, I would just ask you to consider that,
23 given the history that he began back in 1994, when he
24 began his burglary convictions, he obviously did not
25 take the help that he got and use it to try to help

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1 himself and his parents. He continued to break the law.
2 He continues to go into buildings that clearly -- I
3 mean, the liquor store would not be open at three in the
4 morning. The fact that he hid his truck from view --
5 first of all, he admits he was using drugs. He's
6 driving at three in the morning. He's mapping out where
7 he's going to go first. Goes to the liquor store. Sees
8 that he can't get in there. Then goes back to the Moon
9 Bar. And then tears off this panel to get into the bar.
10 Whether it's a sturdy structure or not, I mean, he was
11 exploiting the, I guess, the limits of the structure and
12 got in there and used his skills to gain entry. He
13 wasn't breaking in to get help for his drug addiction.
14 He only claims that he was getting help -- asking for
15 help because the officers happened to show up. I'm sure
16 if he had not been caught, he wouldn't be driving to the
17 drug rehab program the next morning. He was there
18 stacking up the beer, the four bottles of liquor and the
19 cigarettes, which I don't think can be scrapped and
20 certainly would not benefit his parents in anyway,
21 unless they were traded for medication.

22 So it seems like there's certainly a pattern of not
23 only drugs, but he's also looking for alcohol. And he
24 had no friends with him that night, so he was working
25 all by himself, and obviously, you know, under the

1 influence of himself and the drugs. So I think that he
2 has demonstrated a clear pattern of breaking into
3 places, into businesses, and trying to get what he can.
4 In this situation, it was not his lucky night, or maybe
5 it was, because Sergeant Allgood happened to see all of
6 it unfolding and brought his guys in and they did catch
7 him coming from inside the bar outside, and surrendered,
8 because at that point his only choice was to stay in
9 there and have a standoff or surrender, which is what he
10 did, to his credit.

11 So with all that, Your Honor, I think the other
12 thing you should know is he was brought here from
13 Spartanburg on November 13th for a plea, as indicated,
14 to the burglary second and the State dropping two of the
15 other charges. He was brought again on December 11th
16 under the impression that he was going to be pleading
17 guilty, and then said he wasn't going to. So at that
18 point I made it very clear that this was going to be on
19 the trial docket and that we were going to deal with
20 this charge. And so only the day before the trial,
21 after meeting with the witnesses, having to talk with
22 this poor woman who just lost her husband to cancer and
23 ask her to come in and have to testify tomorrow. You
24 know, it just seems like for someone who's wanting to
25 take responsibility and to get help, he has done nothing

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1 to put himself in a position where he could actually
2 indicate that he has potential to use that help to help
3 himself and to help his parents. I mean, so I'll leave
4 it there. Thank you.

5 MS. HENRY: Your Honor, can I respond just
6 really briefly?

7 THE COURT: Yes, ma'am.

8 MS. HENRY: I apologize. From what I can see
9 from his record, it looks like his last -- and again,
10 Terry is -- Terry has this record. I mean, that's
11 absolutely true. The last burglary that she's
12 discussing had been over ten years ago. I would like to
13 make that very clear. And I'm really -- I'm sure the
14 Court isn't, but I'd really like you to remember that
15 the charges that are pending in Spartanburg are pending.

16 THE COURT: Right.

17 MS. HENRY: That he's not pled guilty or been
18 convicted of them in anyway.

19 And I'd also like to remind everybody that while
20 Terry, while Terry did wait, he is taking responsibility
21 now and he is not taking this to trial. He's pleading
22 before trial.

23 THE COURT: I'm not considering that he's been
24 on the trial docket or ---

25 MS. HENRY: Thank you.

1

CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is
5 a true, accurate, and complete transcript of record of
6 all the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Greenville County, South
9 Carolina, on the 16th day of January, 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14

October 10, 2013

15



16

17

Circuit Court Reporter

18

APPLICATION FOR POST CONVICTION RELIEF

Form 5

STATE OF SOUTH CAROLINA

BY THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2013-CP-23- 03703

TERRY DOUGLAS CAMPBELL 281286

FULL NAME AND PRISON NUMBER

VS

APPLICATION FOR

STATE OF SOUTH CAROLINA

POST CONVICTION RELIEF

Instructions Read Carefully

In order for this application to receive consideration by the court, it shall be in writing, (legibly handwritten or typewritten) signed by the applicant and verified (notarized) and it shall set forth in concise form the answers to each applicable question. If necessary applicant may furnish his answer to a particular question on the reverse side of the page or an additional page. Applicant shall make clear to which question any such continued answer refers. Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should therefore exercise care to assure that all answers are true and correct.

If the application is taken in **forma pauperis** it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the **original** shall be mailed to the Clerk of Court for the county in which the applicant was convicted.

BO-00-114

- 1) Place of detention:
Wateree River Correctional Institution
- 2) Name and location of court which imposed sentence:
13th Judicial Circuit, Greenville County Courthouse, 305 E. North Street, Greenville, SC 29601
- 3) Names of co-defendants (if any): None
- 4) The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
A. 2012 GS 2302101 2nd degree burglary violent
- 5) The date upon which sentence was imposed and the terms of the sentence:
A. 1/16/13 100 months
- 6) Check whether a finding of guilty was made:
A. After a plea of guilty ✓
- 7) Did you appeal from the judgement of conviction or the imposition of sentence?
Yes
- 8) If you answered yes to (7) list:
A. The name of court to which you appealed:
(i) South Carolina Court of Appeals
B. The result in such court to which you appealed:
(i) Dismissed
C. The date of such result:
(i) May 1, 2013
D. If known, citations of any written opinion or orders entered pursuant to such results:
N/A
- 9) If you answered no to (7) state your reasons for not so appealing:
N/A

- 10) State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:
- A. I was sentenced on an indictment for first degree burglary. My sentence sheet reads burglary 2nd (X) lesser included offense 2nd (X) serious (X) violent.
 - B. I was told as part of a plea bargain that I would be given credit for 249 days.
 - C. My public defender was very ineffective assistance of counsel.
- 11) State concisely and in the same order the facts which support each of the grounds set out in (10):
- A. I was arrested on 2/21/12 on warrant M-993018 burglary (non-violent) (after June 20, 1985 – second degree). This was a burglary of a bar with no dwelling for at least .5 miles, well off of the property. Under no conditions was this a first degree burglary. There was no weapons or explosives involved. Therefore, I was not guilty of first degree burglary nor was this plea to a lesser included offense or serious.
 - B. After being promised credit for 249 days time served by my public defender and after my public defender asking the judge about my credit and the judge stating that I would get the credit and the judge checked that the defendant is to be given credit for time served. I did not get it.
 - C. I was being held in Spartanburg County Jail from 5/19/12 through 1/22/13. In November 2012, Greenville County transferred me from Spartanburg to Greenville. I met with my public defender, Sarah Henry. Ms. Henry wanted me to plea to 8 years. I refused telling her I had not seen discovery and would not plea until I did see it. Ms. Henry told me that I should have already received it and she would send it out that day. She brought a sentencing sheet and told me that I had to sign it in order for her to arrange transportation for me back to Spartanburg. I told her I would sign it but I am not pleading to anything. On 12/10/12 I was taken back to Greenville County. I met Ms. Henry and she said "we are going to plea today". I told her I was not pleading today and that I still had not received my discovery. She quickly flipped through some pages of discovery and told me that I was facing a life sentence. I told her that no I was not and she told me that she would show me. Later she came back and told me she was wrong about the life sentence. I asked her had I been indicted yet. She left and came back and said no but the solicitor is going to have you indicted in January and a jury trial by March. On 1/8/13 I received my discovery showing an indictment for first degree burglary dated July 31, 2012. Ms. Henry visited me at Spartanburg on 1/11/13 and 1/14/13 trying to make me commit to a plea. She said I must plea bargain before the trial date or 1/17/13. I did so on 1/16/13.

- 12) Prior to this application have you filed with respect to this conviction?
- A. Any petition in a state court under South Carolina law?
No
 - B. Any petition in state or federal courts for habeas corpus or post conviction relief?
No
 - C. Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8).
No
 - D. Any other petitions, motions, or applications in this or any other court?
No
- 13) If you answered yes to any part of (12) list with respect to each petition, motion or application:
N/A
- 14) Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion, or application which you have filed?
No
- 15) If you answered yes to (14) identify:
N/A
- 16) If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented :
My appeal was wrongly dismissed as I stated sufficient grounds for an appeal be granted.
- 17) Were you represented by an attorney at any time during the course of:
- A. Your assignment and plea? Yes
 - B. Your trial if any?
 - C. Your sentencing? Yes

D. Your appeal, if any, from the judgement of conviction or the imposition of sentence?

Yes

E. Preparation, presentation, or consideration of any motions or applications with respect to this conviction, which you filed?

Only my appeal which was dismissed.

18) If you answered yes to one or more parts of (17) list:

A. The name and address of each attorney who represented you:

Sarah Henry, 13th Circuit Public Defender, 305 E. North Street, Ste.123,
Greenville, SC 29601

B. The proceedings at which each attorney represented you.

I Plea, sentencing, filing appeal

19) State clearly the relief you seek in filing this application:

I want a fair sentence comparable to others I have seen — a lesser sentence. I want my credit for time served as I was promised.

20) Are you under sentence from any other court that you have not challenged? No

APPLICATION TO PROCEED WITHOUT PAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEORY

I Terry Douglas Campbell, hereby apply for leave to

Proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terry Douglas Campbell
 Applicant

(SWORN) or Affirmed to and subscribed before me this 1st day of July
2013.

JJ Munt
 Notary Public

My commission expires: 9-21-19

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF GREENVILLE

CLOCK IN TIME RECALLED

Date: _____

FILED IN CLERK OF COURT
GREENVILLE COUNTY
PAUL B. WICKENS, SHIRAZ
2013 JUL - 3 A 9:06

I, Terry Douglas Campbell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application, and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 1st day of July, 2013.

Terry Douglas Campbell

Notary Public South Carolina gg munt

My commission expires 9-21-19

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
)	2013-CP-23-3703
)	
Terry Douglas Campbell,)	
S.C.D.C. No. 281286)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its return to the application for post-conviction relief (PCR) filed July 8, 2013, and amended application filed October 8, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the July 2012 term of the Greenville County Grand Jury for first-degree burglary (2012-GS-23-2101). The Applicant was represented by Sarah Henry, Esquire.

On January 16, 2013, the Applicant pled guilty to second-degree burglary. The Honorable G. Edward Welmaker sentenced Applicant to confinement for a period of 100 months.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated May 1, 2013, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule

203(d)(1)(B)(iv), SCACR.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the plea transcript, and the appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The Applicant "was sentenced on an indictment for first degree burglary. [His] sentence sheet reads 'burglary 2nd,' 'lesser included offense 2nd,' 'serious' 'violent.'"
 - a. The Applicant further alleges that he "was not guilty of first degree burglary nor was this plea to a lesser included offense or serious," because the crime was not carried out in a dwelling, and "no weapons or explosives [were] involved."
2. The Applicant "was told as part of a plea bargain that [he] would be given credit for 249 days" but did not receive it.
3. Ineffective assistance of counsel:
 - a. During the Applicant's incarceration, Counsel recommended he "plea to eight (8) years," and told the Applicant that if "he didn't plea, [he] would get fifteen (15) years."
 - b. Counsel approached the Applicant "at least four" times to encourage him to plea, and the Applicant "told [her] multiple times that [he] had no intention of plea[d]ing."
4. Solicitor amended the indictment, increasing the offense from burglary 2nd degree to burglary 1st degree, depriving the circuit court of jurisdiction.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional

norms” for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement

of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Respondent interprets some of the Applicant's claims to be that his guilty plea is involuntary. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests a hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Applicant also asserts that he has not been given credit for 249 days of time served. Respondent submits that the Court should summarily dismiss this allegation, as it is not cognizable in a post-conviction relief application. Aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). A credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. Id. at 369, 527 S.E.2d at 750.

Here, the Applicant complains the South Carolina Department of Corrections (SCDC) is not properly calculating his sentence or is otherwise withholding rightfully earned credits from him. The statutory right to sentence related credits is a protected “liberty” interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. See Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Because SCDC’s disciplinary and grievance procedures are consistent with the standards delineated in Wolff, inmates may seek review of such claims under the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750.

VI.

The Respondent submits the Applicant’s assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it

contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

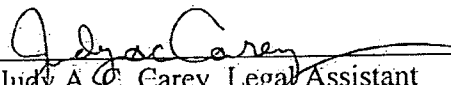
Dec. 3, 2013

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	2013-CP-23-3703
)	
TERRY DOUGLAS CAMPBELL, 281286)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Terry Douglas Campbell, 281286
Livesay Correctional Institution
Post Office Box 580
Una SC 29378-0580

DATED this 3rd day of December, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

Amendment to Application for Post Conviction Relief
2013 - CP - 23 - 03703

State of South Carolina	}	Amendment to PCR	FILED CLERK OF COURT GREENVILLE CO. S.C. PAUL B. WICKENSHER JW	
County of Greenville		ENTERED COMPUTER		
Terry Douglas Campbell 281286				2013 OCT 10 A 11:17
vs				
<u>State of South Carolina</u>				

I Terry Douglas Campbell, would like to add this amendment to my P.C.R. Application. ON 2/21/12 I was arrested for Burglary/Burglary (Non-Violent)(After June 20, 1985)- Second Degree, warrant # M993018; Possession Burglary Tools, warrant # M993019; and Petit Larceny warrant # M993020.

ON March 28, 2012, Solicitor Jennifer Tessitore, sent Indictment 2012-GS-23-002101 for Burglary Second Degree to the Clerk of Court. This indictment was never presented to the Grand Jury.

ON July 3, 2012 Ms. Tessitore sent an amended indictment, indictment 2012-GS-23-002101 to the Clerk of Court. This indictment was for Burglary First Degree and was signed by the Grand Jury Foreperson on July 31, 2012.

My counsel, public defender Sarah Henry spoke to me on at least four occasions trying to get me to plea. Ms. Henry told me that if I didn't plea, I would get 15 years.

Ms. Henry insisted that I plea before my Jury Trial Date of Jan. 17, 2013 in order to get credit for a plea.

Ms. Henry failed terribly at properly representing me. Ms. Henry seemed to be working harder for the prosecution than helping me. I told Ms. Henry multiple times that I had no intention of pleading.

Ms. Henry should have realized that the Indictment against me was no good. I feel quite sure Ms. Henry did realize this and this was her very reason for insisting that I plea.

Pursuant to Rule 3 in the South Carolina Rules of Criminal Procedure, the indictment wasn't properly submitted.

Also where an amendment to an indictment changes an offense to one with increased punishment, the circuit court is deprived of jurisdiction. State v Lynch (SC 2001) 344 S.C. 635, 545 SE 2d 511

Terry Douglas Campbell

Terry Douglas Campbell 291286

Livesay A Dorm A-35

P.O. Box 580

UNA, S.C. 29378

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2013-CP-23-03703
)
)
)
 TERRY DOUGLAS CAMPBELL)
) APPLICANT)
) vs.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA)
) RESPONDENT)

June 19, 2014
 Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

MILLS ARIAIL, ESQ.
 Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

1 MS. RATIGAN: Your Honor, this is the case of
2 Terry Campbell vs. the State of South Carolina. The
3 docket number is 2013-CP-23-3703. Mr. Campbell was
4 indicted for first degree burglary. He was
5 represented on that charge by Sara Henry. On
6 January 16th of 2013 he pled guilty to second degree
7 burglary before Judge Welmaker. He received a
8 sentence of 100 months of imprisonment. That
9 translates to eight years and four months.
10 Mr. Campbell did file a notice of appeal, however,
11 the Court of Appeals on May 1st of 2013 dismissed the
12 appeal based on his failure to provide a written
13 explanation of what issues the guilty plea could be
14 reviewed. His application was timely filed and the
15 State's ready to proceed.

16 THE COURT: Okay.

17 All right, Mr. Ariail.

18 MR. ARIAIL: Yes, Your Honor, we're ready to
19 proceed.

20 THE COURT: All right, you may call your first
21 witness.

22 MR. ARIAIL: Call Mr. Campbell to the stand.

23 THE CLERK: Place your left hand on the Bible,
24 raise your right.

25 TERRY CAMPBELL, after being duly

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 sworn, testified as follows:

2 THE CLERK: Please state your full name for the
3 record.

4 THE WITNESS: Terry Douglas Campbell.

5 THE CLERK: Thank you, you may be seated.

6 DIRECT EXAMINATION

7 BY MR. ARIAIL:

8 Q Mr. Campbell, we're here today on your PCR
9 application that you filed. You were represented by
10 Ms. Henry, correct?

11 A Yes, sir.

12 Q When was the first time that you spoke with
13 Ms. Henry? I think you were -- a warrant was filed and
14 served on you somewhere around February 21st of 2012,
15 correct?

16 A Correct. I stayed in the Greenville County
17 jail for one week. And in that week she come and
18 introduced herself. I didn't see her again until
19 November, 2012 when I was brought from Spartanburg County
20 to Greenville County.

21 Q Okay. During that timeframe did you get
22 discovery in your case?

23 A No, I didn't.

24 Q Okay.

25 A When's the first time you got discovery and

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 discussed it with her?

2 Q Okay.

3 A When I came back in November, I'm not sure
4 exactly which day in November, she was asking me about --
5 trying to get me to plead.

6 I said, No, I'm not pleading. I said, I
7 haven't even seen any of the discovery in the case.

8 She said, Well, you should have already gotten
9 that. What's your address, I'm going to send it
10 personally out to you today.

11 I give her the address. At the end of the day
12 she come in there and handed me a sentencing sheet through
13 the window. I need you to sign this where I can get you
14 transportation back to Spartanburg. Well, I'll sign it if
15 that's what I must do to get back to Spartanburg. But I'm
16 not intending to plea. And I was sent back to
17 Spartanburg.

18 In December, I think it was December 10th or
19 11th, I was brought back.

20 She said, We're pleading in front of Judge
21 Miller.

22 I said, No, I'm not pleading in front of
23 anybody. I still haven't seen discovery. And she tried
24 to show it to me through the window. I said, Look, I need
25 the time to sit down and look at discovery, you know.

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 This is a major thing. This ain't something to do
2 rationally [verbatim].

3 And she got angry told me that, Well, you
4 know, you're looking at a life sentence?

5 I said, No.

6 And she said, Well, you are.

7 I said, Well, I don't understand.

8 She said, Well, I'll show you.

9 She come back a little white later and said, No,
10 I was wrong about that.

11 But it was January 8th before I ever got any
12 discovery.

13 Q Let's go back, I know we jumped ahead a little
14 bit here. In November you were in Spartanburg?

15 A Correct.

16 Q Spartanburg County?

17 A Spartanburg County, yes, sir.

18 Q So, they brought you over here twice to plead;
19 is that correct?

20 A They brought me over here in November to plead
21 and I still wouldn't. They brought me back in December to
22 plead and I still wouldn't. Then January the 8th I got
23 some paper work for first degree burglary indictment. And
24 she comes on January the 11th, which is Friday and tries
25 to get me to plead and I told her I wasn't interested.

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 She comes Monday and plays a recording and tells me, Well,
2 I don't think we can win a jury trial. And trying to get
3 me to plea.

4 And I said, No, I'm not pleading.

5 She said, If you don't plead you're going to get
6 15 years.

7 I said, Well, I'm -- I don't think you're
8 representing me good. I'd like to have different
9 representation.

10 She said, No, that's not going to work. She
11 said, We're go in the courtroom you say that, the
12 Judge is going to ask me if I'm prepared and ready.
13 If I am, then he's going to go ahead, you're not
14 going to get different representation. So, she said,
15 If you're going to plead you need to do it on
16 Wednesday. Your court date's on Thursday the 17th.
17 You need to do it by Wednesday or you're not going to
18 get credit for a plea.

19 And I didn't see no other way around it other
20 than pleading. And after she told me that I couldn't
21 afford an attorney at that point in time.

22 Q Okay. So, you pled to a second degree, violent,
23 burglary, correct?

24 A Correct.

25 Q Okay. And you were indicted for a first degree?

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 A I was indicted for first.

2 Q Okay. What discussion did you have with her in
3 regards to the first degree burglary?

4 A We didn't even have time to talk about that.

5 Q I thought you just--

6 A No, in December she said, You're looking at life
7 sentence.

8 I said, No, I'm not. I even asked her in
9 December have I been indicted? And she told me I have
10 hadn't been indicted.

11 And her exact words was when she came back, No
12 you hadn't been indicted but the Solicitor said she was
13 going to have you indicted in January and have your jury
14 trial by March.

15 Q Okay. I'm trying to narrow this down a little
16 bit. Did you discuss the elements of first degree
17 burglary with her?

18 A No.

19 Q Did you have a conversation with her about
20 whether or not they could convict you of a first degree
21 burglary?

22 A No.

23 Q Okay. Did --

24 A I never knew anything about the first degree
25 burglary until I got that indictment.

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 Q So, after you got the indictment did y'all
2 discuss what the ramifications of that were?

3 A We never discussed it at all.

4 Q Okay. So, you don't plead to a first degree
5 burglary, correct?

6 A No, I didn't.

7 Q Okay.

8 A I didn't commit a first degree burglary.

9 Q Today tell -- and you've gone through and
10 discussed -- tell the Court how you believe Ms. Henry is
11 ineffective in your representation.

12 A Okay. First of all, she quoted the law wrong,
13 telling me I'm looking at a life sentence. And I wasn't.
14 She coerced me into pleading. If we had a trial on --
15 first degree burglary has to be at a dwelling. This was a
16 building. It was never a dwelling. And how could it be a
17 first degree burglary? It couldn't. I mean, if I went to
18 court on first degree burglary, I couldn't be found
19 guilty.

20 Q So, I guess -- I mean, what I'm trying to
21 summarize this for the Court is that you believe that you
22 were indicted for first degree burglary. You were
23 thinking if you went to trial you would not have been
24 convicted of a first degree burglary because it was not a
25 dwelling, it was a building?

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 A Correct.

2 Q Okay. So, as a result of that you wouldn't have
3 pled to anything knowing you could have gone to court and
4 got a direct verdict and potentially been found not
5 guilty, correct?

6 A Yes, sir. That and the fact also that Rule 3 of
7 the Rules of -- South Carolina Rules of Criminal Procedure
8 say you got 90 days to indictment somebody, which it was
9 160 days. Ms. Tessitore drew up indictments on
10 March 28th, well within time. But she didn't present them
11 to the Grand Jury. She waited a 160 days later and drew
12 up new indictments and presented them to the Grand Jury.

13 Q Okay. Did you have any discussion with
14 Ms. Henry about being indicted for a second degree
15 burglary?

16 A I didn't know this until I got to study the law.
17 I was counting on her to know this.

18 Q I mean, what I'm getting at is, did you and her
19 have a discussion after you said, Okay, I'm not -- there's
20 no way they can prove first degree burglary because it's
21 not a dwelling--

22 A She --

23 Q Hold on, let me finish my question. Did you
24 have a discussion with her saying, Hey look, they can't
25 prove first degree burglary but, you know, they can take

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 you back and reindict you before we go to trial. Did you
2 ever have a discussion with her about that?

3 A No, we didn't.

4 Q Okay. Did you ever ask her if you could be
5 indicted for a second degree burglary?

6 A No, I didn't.

7 Q Okay. Tell me if there any other -- those are
8 the main issues we've discussed in this. Are there any
9 other things you would like the Court to know other than
10 you've got a stack of documents that I think you wanted to
11 be submitted as exhibits; is that correct? Or they've
12 already been submitted as part of your PCR Application,
13 right?

14 A Yes, sir. I got some things I'd like to say
15 that I don't think we've covered.

16 Q First, you want me to submit these exhibits that
17 you've given to me?

18 A I've got a copy for myself. I brought Attorney
19 General's Office a copy and the Judge a copy so they could
20 reference them when I was going over this. I mean...

21 Q And I know -- and I want to just let you know,
22 everything that you have made a part of the record Judge
23 Stilwell has and can review.

24 A Yes, sir.

25 Q And these exhibits, if these haven't been

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 included, I can include them as part of the record for
2 Judge Stilwell to have. Would you like for me to do that?

3 A Yes, sir.

4 MR. ARIAIL: Your Honor, if I can make these, I
5 think he's got exhibits A through E.

6 THE COURT: Yes, sir, I have a conforming copy
7 Mr. Campbell gave me when he took the stand.

8 MR. ARIAIL: Okay.

9 THE COURT: So, if they're no objections I'll
10 allow you to introduce them collectively as
11 Applicant's Exhibit No. 1.

12 MS. RATIGAN: I have no objection, Your Honor.

13 THE COURT: Okay, without objection the same is
14 admitted as Plaintiff's Exhibit No. 1.

15 (WHEREUPON, Applicant's Exhibit 1 was marked
16 for identification and received into evidence.)

17 BY MR. ARIAIL:

18 Q Now, Mr. Campbell, I know we've brought up the
19 issue that we discussed. Are there other things that you
20 want to have the Court understand that I don't believe are
21 part of your application or your amended. PCR
22 Application?

23 A This is all part of it, I'd like to say it.

24 Q Okay.

25 A Okay, on February 21st 2012, I was arrested for

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 burglary, second degree, non-violent. That was warrant
2 99301A, that's Exhibit A. The rests was for a burglary of
3 a business named the Moon Bar. No one lived in the
4 business and the owner, James Best Sullivan, was called by
5 the sheriff's office to the scene. That's exhibits B and
6 C. On March 28th, 2012, Solicitor Jennifer Tessitore drew
7 up Indictment 2012-GS-23-2102 for possession of burglary
8 tools. Ms. Tessitore also draw up Indictment
9 2012-GS-23-2101 for burglary second degree. That's
10 exhibits D and E. Please notice these indictments lack a
11 Grand Jury signature.

12 On July 3rd, Solicitor Jennifer Tessitore
13 drew up Indictment 2012-GS-23-5037 for petit larceny and
14 revised Indictment 2012-23-2101 to first degree burglary.
15 See exhibits F and G. Please notice these indictments
16 were drawn up 130 days -- 132 days after the arrest. On
17 July 31st Ms. Tessitore presented Indictments 2101, 2102
18 and 5037 to the Grand Jury. That's seen in exhibits H, I
19 and J. Please take notice that these were not presented
20 to the Grand Jury until after 160 days after the arrest.
21 Okay, these indictments were not prepared or presented
22 pursuant to Rule 3 of the South Carolina Rules of Criminal
23 Procedure. Which allows 90 days unless an extensions are
24 filed. There were no extensions filed. That can be seen
25 in exhibits K and L. Indictment 2101 was revised from

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1 burglary second to burglary first. My crime did not
2 contain the elements of a burglary first.

3 The true test of the sufficiency on an
4 Indictment is not whether it can be made more definite and
5 certain but whether it contains the necessary elements of
6 the offense intended to be charged. The sufficiency
7 apprizes the Defendant of what he must prepare to meet.

8 That's quoting Karen C. Ratigan, Senior
9 Assistance Deputy Attorney General in her return.

10 Warrant M993018 Exhibit A, the Greenville
11 County Sheriff's Office supplemental report exhibit B, The
12 Victim Witness Statement, Exhibit C, the burglary second
13 degree indictment which was not presented to the Grand
14 Jury, Exhibit E, the Indictment, for first degree
15 burglary, the revised 2101, Exhibit G and H. All in each
16 state, The Defendant entered the building belonging to the
17 Moon Bar which is a business. This amounts to burglary
18 second degree. South Carolina Code 16-11-312, that's
19 Exhibit N.

20 On July the 3rd of 2012, Jennifer
21 Tessitore's revised first degree burglary Indictment 2101,
22 did not -- my crime did not contain the elements of this
23 Indictment. In November 2012 I was transferred to
24 Spartanburg County -- from Spartanburg County, where I was
25 being detained, to Greenville County. On this day I met

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 with my court appointed attorney, Sara Henry. Ms. Henry
2 told me that I should plead guilty. I told Ms. Henry that
3 I had not received any discovery, had no intention to
4 plead. Ms. Henry told me that I should have already
5 received discovery, she took my address and assured me
6 that she would personally send it that day.

7 I was then put in the holding cell for the next
8 few hours. At around 4:00 p.m. Ms. Henry met with me
9 again. She was holding a sentencing sheet. She handed me
10 the sentencing sheet telling me that I must sign it in
11 order for her to arrange transportation back to
12 Spartanburg. I signed it telling her I'll sign this if
13 this is what is required for transportation but I do not
14 intend to plead. On December 11th I was again transferred
15 from Spartanburg County to Greenville County. Where I met
16 with Ms. Henry.

17 Her opening words were, We are pleading in front
18 of Judge Miller today.

19 I responded, You may be but I'm not. I still
20 haven't received any discovery.

21 Ms. Henry said, Well, you know you're looking at
22 a life sentence?

23 I said, No, I'm not.

24 She said, Well, I'll show you. Then she left
25 and returned to the holding cell where she told me

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 that she was wrong, that I wasn't looking at a life
2 sentence. She tried to get me to plead again.

3 I refused and asked Ms. Henry, have I been
4 indicted yet? This is in December of 2012.

5 She looked through some paper work and told me,
6 No. She then left the room. A few minutes later she
7 come back and telling me, I just spoke to the
8 solicitor who is handling your case. She said she's
9 going to have you indicted in January, taking your
10 trial in March and asking for 15 years. She's also
11 going to have your bond revoked.

12 I told Ms. Henry to tell the solicitor to do
13 just that. I was then taken back to the holding cell
14 and transferred back the Spartanburg County.

15 On January the 18th, 2013, I finally received my
16 discovery from Ms. Henry along with indictment for
17 first degree burglary and a letter telling me that I
18 was on the trial docket for Thursday, January 17th.
19 On Friday, January 11th, Ms. Henry visited me at the
20 Spartanburg County jail. Ms. Henry, again, told me I
21 could plead guilty. I told Ms. Henry that I'm not
22 intending to plead. On Monday, January the 14th,
23 Ms. Henry, again, visited me at the Spartanburg
24 County jail. She had a recording with her of me
25 taken in a police car, which she played. She then

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 told me I should plead guilty.

2 I told her that I did not intend to plead.

3 She then told me I would get credit for the time
4 I've spent in Spartanburg plus week I spent in
5 Greenville.

6 I told her I was not happy with her
7 representation and intended to ask the Judge for new
8 counsel.

9 She told me that would not work and the Judge
10 would ask her if she is ready to try her case and she
11 would say yes and we would have a jury trial and I
12 would be found guilty. I still refused to plead.
13 She told me I must plead before January the 17th, the
14 day of trial in order to get credit for a plea. She
15 wrote down her phone numbers and told me that I could
16 not win a trial and I should plead. And if I change
17 my mind to get in touch her, it was really important
18 to plead before the trial date.

19 My mother called her on Tuesday. And Wednesday
20 I was transferred, Wednesday the 16th, and I was
21 transferred and I pled.

22 The solicitor, even in her -- in the transcript,
23 the solicitor even said the crime was burglary second
24 violent. The Judge stated that the max was 15 years
25 but they knew that this Indictment is for first

TERRY CAMPBELL-DIRECT BY MR. ARIAIL

1 degree. I have even questioned the Court about the
2 first degree burglary indictment. And no one
3 addressed it in court. That's all, Your Honor.

4 Q Okay. Now, the last question I have in regards
5 to it. Would you have pled to burglary second degree?
6 You were told by Ms. Henry that the State couldn't approve
7 beyond a reasonable doubt that burglary first?

8 A Had that indictment been for burglary second
9 degree, I would have had no problem pleading, sir.

10 Q Okay. But here's -- the question I have is, you
11 pled to a burglary second so you're saying the only reason
12 you did that--

13 A I'm saying the indictment was no good. I
14 wouldn't have pled. They couldn't have a jury trial with
15 that indictment.

16 Q Okay.

17 MR. ARIAIL: Your Honor, I have no further
18 questions.

19 THE COURT: Ms. Ratigan.

20 CROSS-EXAMINATION

21 BY MS. RATIGAN:

22 Q Mr. Campbell, what were you originally arrested
23 for? What charges?

24 A Burglary second, non-violent, possession of
25 burglary tools, petit degree larceny.

TERRY CAMPBELL-CROSS BY MS. RATIGAN

1 Q Okay. So, when Ms. Henry was trying to get you
2 to plead guilty before the first degree burglary
3 indictment, she wanted you to plead guilty to these
4 charges?

5 A She told me I wasn't indicted. I never even
6 seen an indictment until January the 8th.

7 Q Okay. That's not what I'm asking. What I'm
8 asking you is, I'm talking about the burglary first, I'm
9 talking about the original charges of burglary second,
10 possession of burglary tools and petit larceny?

11 A Right.

12 Q Ms. Henry was trying to get you to plead guilty
13 to those, correct?

14 A Correct. Well, I assume that's what it was.
15 She told me I was looking at a life sentence. I don't
16 know what she was really trying to get me to pled to.

17 Q Why did she tell you you should plead guilty to
18 these charges?

19 A She told me she couldn't win a jury trial.

20 Q And is that because the officers found you
21 inside The Moon Bar, did she tell you that?

22 A No, they didn't find me inside?

23 Q They didn't find you inside at all?

24 A I walked outside and met them.

25 Q Okay. And did you tell the officers -- did you

TERRY CAMPBELL-CROSS BY MS. RATIGAN

1 admit to having going into The Moon Bar?

2 A Correct, I did.

3 Q Okay. And she basically told you that these
4 facts meant that she couldn't win at trial?

5 A Correct.

6 Q Okay.

7 A Well, she just told me -- she didn't really
8 say -- she just said we couldn't win a jury trial.

9 Q Why didn't you want to plead guilty to the
10 original set of charges of second degree burglary,
11 possession to tools and petit larceny, why didn't you want
12 to plead?

13 A I wanted to look at discovery before I pled to
14 anything.

15 Q And your testimony is that you didn't get the
16 discovery until January?

17 A January the 8th.

18 Q Okay.

19 A In fact, I think I have a copy of it. Sent out
20 on January the 6th.

21 Q Okay. But Ms. Henry told you beforehand she had
22 sent it to you, you just hadn't received it?

23 A She told me in November I should have already
24 gotten it.

25 I told her, Well, I hadn't.

TERRY CAMPBELL-CROSS BY MS. RATIGAN

1 And he said, Well, I'll personally send it out
2 today and got my address.

3 I come back in December, I still hadn't had it
4 and I eventually got it on January the 8th.

5 Q Well why didn't you tell Judge Welmaker that day
6 that you were unhappy with the way that Ms. Henry
7 represented you and the way this whole thing had come
8 about; why didn't you tell the Judge that?

9 A Because I told Ms. Henry that's what I intended
10 to do.

11 She told me, That's not going to work, the Judge
12 is going to ask me if I'm prepared to go to trial. And if
13 I say yes, I am, which I am, we're going ahead it.

14 Q You have some prior convictions before, you've
15 been to court before; correct?

16 A Yes, ma'am.

17 Q So, you knew you could tell the Judge. She just
18 advised you not to?

19 A Right.

20 Q Okay. And today you're not saying that you're
21 innocent, you're just saying that the indictment was
22 invalid?

23 A Correct.

24 Q Okay.

25 That's all I have, Your Honor.

TERRY CAMPBELL-CROSS BY MS. RATIGAN

1 MR. ARIAIL: Nothing further, Your Honor.

2 THE COURT: Thank you, Mr. Campbell, you can
3 step down. I appreciate your being here, sir.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Yes, sir.

6 MR. ARIAIL: Your Honor, I'm not sure if we made
7 this a part of the record.

8 THE COURT: I think you did. I admitted them
9 into the record as Applicant's Exhibit No. 1.

10 MR. ARIAIL: Thank you, Judge.

11 THE COURT REPORTER: I didn't mark them, Judge.

12 THE COURT: I'm sorry, here you go.

13 (WHEREUPON, Applicant's Exhibit No. 1 was marked
14 for identification and received into evidence.)

15 THE COURT: Anything further from the Applicant?

16 MR. ARIAIL: No, Your Honor, that's our case.

17 Thank you.

18 THE COURT: Ms. Ratigan.

19 MS. RATIGAN: The State calls Ms. Henry.

20 THE CLERK: Ms. Henry, place your left hand on
21 the Bible, raise your right hand.

22 SARA HENRY, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you, please state your full
25 name for the record.

TERRY CAMPBELL-CROSS BY MS. RATIGAN

1 THE WITNESS: Sara Henry.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MS. RATIGAN:

5 Q Ms. Henry, do you recall representing
6 Mr. Campbell related to this incident?

7 A Yes, I did.

8 Q And were you appointed or retained?

9 A I was appointed in this case.

10 Q And did you file the usual Brady Rule 5 motion?

11 A I did.

12 Q Did you receive that material from The State?

13 A Yes.

14 Q Did you review as it came in?

15 A I did.

16 Q Upon receiving the discovery, how strong would
17 you say The State's case was against Mr. Campbell?

18 A In my opinion the case -- the State's case was
19 very strong. The majority of this had been witnessed by,
20 I believe, an officer in his car eating a sandwich. You
21 know, Terry's car was parked at the scene. He was found
22 at the scene. He was very vocal on the in-car camera,
23 which is what Terry and I reviewed together before the
24 trial date. I just -- yeah. He pride opened the side of
25 The Moon Bar or, allegedly I guess at this point. And

SARA HENRY-DIRECT BY MS. RATIGAN

1 wiggled in and had loaded up a lot of the liquor in the by
2 the hole. And when the officer that had witnessed this
3 saw what was going on and called it in, he was still at
4 the scene when the police arrived. And I felt with that
5 coupled with what was in, you know, his then statement on
6 the in-car video, that we would have a very limited chance
7 of winning this if we went to trial on it.

8 Q And did you explain these concerns with
9 Mr. Campbell?

10 A I did. When Terry and I met, and he's
11 absolutely correct, it was in -- he'd been carded a couple
12 of times. I don't think I realized that he was in
13 Spartanburg. By the time I met him, the second time, it
14 was November 13th, I think, of 2012. He was transported
15 from Spartanburg detention. And we briefly went over his
16 charge there. And when he and I talked we went over the
17 discovery that I had and the offer that we got originally
18 from the solicitor's office. And he is correct about
19 the -- our initial conversation about the burglary first.
20 The initial offer that I received from Jennifer Tessitore
21 had him listed as a burglary first reduced to burglary
22 second, non-violent on the plea offer. I guess indicating
23 her beliefs that she would be able to get an effected
24 indictment for burglary first. And that's what we
25 discussed. And he correctly was like, I don't think

SARA HENRY-DIRECT BY MS. RATIGAN

1 that's accurate.

2 And I said, Okay, I'm going to go check on
3 it. And he and I talked about that. It was something
4 that was corrected and we moved on.

5 Q When you received discovery, did you send copies
6 to Mr. Campbell?

7 A I asked my staff to send a copy of discovery. I
8 believe Terry when he says he didn't get it. He was
9 supposed to have gotten it. So I asked again to send it.
10 He and I went over all of the discovery. I essentially
11 read almost the entire discovery package out loud to
12 Terry. And we went over all of that. And we discussed
13 the plea offers from Jennifer Tessitore. We discussed
14 trial. And he did get his own full copy of it. I believe
15 exactly when he said he did in January.

16 Q And Mr. Campbell has stated that his original
17 charges were burglary second, possession of burglary tools
18 and petit larceny, does that sound accurate?

19 A Yes, that is correct.

20 Q And when you were attempting to get him to plead
21 guilty, was it to these charges or was it to that burglary
22 first referenced in the plea letter?

23 A The burglary first referenced in the plea letter
24 was burglary first and then it was -- that was the
25 original charge she had listed. And then the plea offer,

SARA HENRY-DIRECT BY MS. RATIGAN

1 the offer was a reduction. He was originally offered
2 burglary second, non-violent, dismissal of burglary and
3 petit larceny if he would plea guilty. And I negotiated
4 with Jennifer Tessitore that -- she said that she would be
5 asking for time if she was going to make a recommendation
6 because of his prior record for burglary. And sh agreed
7 to remain silent, you know, as part of the recommendation,
8 as part of our deal. When I brought that up to Terry, he
9 said that he wanted drug court. And I discussed that with
10 Jennifer Tessitore, she said that in her opinion he wasn't
11 eligible and she would not be recommending that. And
12 yeah, when we met again in December he said that he didn't
13 want the offer again.

14 Q Did he tell you why he didn't want the offer?

15 A Yes.

16 Q Or just that wanted drug court?

17 A Well, at this point he said that he would -- he
18 would accept the dismiss of the burglary tools and the
19 petit larceny but he would only plead guilty to grand
20 larceny and would only accept a recommendation of HIP and
21 probation.

22 I talked to the Solicitor and I have in my notes
23 that she said, Hell no. And she also said she'd seek to
24 his bond revoke because of the new burglary charges
25 pending in Spartanburg.

SARA HENRY-DIRECT BY MS. RATIGAN

1 And I relayed that info to Terry along with a
2 deadline for the offer.

3 And his response was, I'm going to bond out in
4 Spartanburg and then I'm going to get a real lawyer and
5 get all of these charges taken care of.

6 Q So, Mr. Campbell testified that y'all had a
7 meeting around January the 11th, is that around the time
8 that you told him that the solicitor said that she would
9 not negotiate any further?

10 A Let's see. That last conversation that I just
11 repeated happened December 11th, 2012. And then I sent
12 Terry a letter, this letter. He was actually placed on
13 the trial docket, not for burglary first but burglary
14 second, violent, possession of burglary tools and petit
15 larceny third and above. And that is the letter that I
16 sent him where I explain that. I tell him that the
17 burglary second, violent carries a maximum of 15 years in
18 prison, along with what the other two carry, five years.
19 Because the petit larceny was enhanced up to 10. And I
20 say in our last meeting, December 11, You told me you were
21 planning to hire a private attorney, you need to do this
22 immediately. I'll continue to prepare for trial until I
23 hear from you or your new lawyer. And that's the letter
24 that I sent him at the beginning of January along with his
25 copy of discovery.

SARA HENRY-DIRECT BY MS. RATIGAN

1 Q So, was Mr. Campbell eventually brought over for
2 trial or to plead or do you recall?

3 A He was. I went to go see him multiple times. I
4 think maybe three times before that trial. Just in
5 January. And I'd been seeing him before that Spartanburg.
6 We went, we prepared, we went over all the discovery again
7 and he had his copy. And we watched the video. Let's
8 see, I talked to -- he actually said that he wanted a
9 different public defender, so on the 10th of January I
10 talked to our office manager, Deborah, who said that the
11 PD's office policy was that you don't get another attorney
12 from inside the office. So, I attempted to get him
13 someone new from inside our office but apparent that's
14 not -- you don't get to rotate, I guess, inside the PD's
15 office. And he, I guess, wanted to hire another lawyer
16 that he felt more comfortable with.

17 Q So when did Mr. Campbell decided that he was
18 going to plead guilty, do you recall?

19 A Let's see. Okay, I gave him the other plea
20 offer which would be Jennifer Tessitore agreed to do
21 burglary second violent this time, would not go back to
22 non-violent, and to still dismiss the burglary tools and
23 petit larceny enhanced. He said he would think about it.
24 He understands that even that offer will disappear if he
25 waits. We went over his testimony. And then I think it

SARA HENRY-DIRECT BY MS. RATIGAN

1 was after that that I got a phone call from his mom saying
2 that he did want to accept that. He did want to plead
3 before the trial.

4 Q Okay. So, it wasn't one of those, the morning
5 of the plea type of situations?

6 A No. Our last conversation was, it looks like in
7 person anyway, was on the 11th of January. And looks like
8 I got the call from his mom, maybe the next day.

9 Q Okay. Did Mr. Campbell, did he waiver at any
10 point during the plea? Did he seem like he wanted to back
11 out or step down?

12 A I think that he was surprised when the Judge
13 read off the burglary first indictment. I think that
14 shocked him. And I can understand that. He's out there
15 believing that he's pleading guilty to the burglary
16 second, violent. And he's in such a vulnerable position
17 when he's doing all this. I think that just shocked him
18 and made him a little uncomfortable.

19 Q But he did end up pleading guilty to burglary
20 second, violent, as agreed?

21 A Yes, he did. Yes, he did.

22 MS. RATIGAN: That's all I have, Your Honor.

23 THE COURT: Cross-examination, sir?

24 MR. ARIAIL: Yes, Your Honor.

25 CROSS-EXAMINATION

SARA HENRY-CROSS BY MR. ARIAIL

1 BY MR. ARIAIL:

2 Q Ms. Henry, in regards to, I guess, your initial
3 discussions with Mr. Campbell, you said you went over the
4 entitle packet of discovery with him?

5 A Yes.

6 Q Okay. During those discussions, you've heard
7 him testify that he was indicted for the burg first and he
8 believed it was a burg second. Which, I guess, you agreed
9 with that?

10 A Yeah, we're on the same page about that.

11 Q Now, there was a discussion at one point in time
12 that you said he was looking at life or had some agreement
13 in regards to whether or not burg first and all that. Do
14 you remember those conversations with him?

15 A I do. Our original conversation after he was in
16 Spartanburg, when he got transported back. So this was
17 the November 13th, that first meeting in the holding cells
18 here at the courthouse. That's when we went over the
19 first plea offer that we got from Jennifer Tessitore. I
20 think I still got it in here. It's where she had already
21 listed -- and I know you've seen the plea offers, they
22 say, Original charge, burglary first reduced to burglary
23 second, non-violent. And that's what I was going off of
24 when we had that conversation. And his rendition of that
25 was pretty accurate.

SARA HENRY-CROSS BY MR. ARIAIL

1 I said, Okay, looks like she's going to indict
2 you for burglary first, that carries 15 to life. She's
3 reducing it to burglary second, non-violent.

4 He was like, Wait, wait, wait. And when he said
5 that I kind of -- we all stopped. Then I went and checked
6 everything, we went over discovery again. And I was like,
7 You know what, you're right and we came back and talked
8 about it. And we both agreed that the most he would get,
9 I think, would be the burglary second, violent. Which is
10 zero to 15.

11 Q So, he knew he was getting -- I don't think
12 there was any -- I think he says burg second was what he
13 believed he was guilty of.

14 A Yes.

15 Q But he could have gotten -- and you explained to
16 him it was a maximum of 15 years under that?

17 A Yes.

18 Q Along with the other charges he had too?

19 A Yes.

20 Q Okay. Now, I think his what he's concerned
21 about, and I think I've tried to summarize a little bit
22 here, is that he didn't believe that they could be
23 successful on a burg first, so why don't we just go to
24 trial and win that and get a directed verdict and then he
25 will be released. Did you explain anything or have a

SARA HENRY-CROSS BY MR. ARIAIL

1 conversation with him about that?

2 A Well, my understanding -- my understanding from
3 the trial docket and what was going on is that she had
4 gotten the indictment for burglary first. I honestly
5 don't know how she got that through the Grand Jury. I
6 think that's its own examination. But the -- I believe
7 that she was planning to modify the indictment and go
8 forward on the burglary second, violent.

9 Q Okay.

10 A Which was my understanding of what the plan was
11 here. I mean, if she'd gone forward on the burg first, I
12 do believe that we could have gotten a directed verdict on
13 the burg first. I don't believe that's what would have
14 happened. And I believe that that's how Terry and I
15 discussed it.

16 Q I think you said and maybe I didn't hear it
17 right, was he put on the trial docket for a burg second?

18 A Yes.

19 Q Okay. So, I guess there was some discussion or
20 she had made some decision not to try him on the burg
21 first, she was going to try him on the burg second?

22 A Yes. That's according to her emails to me.

23 Q Okay. So did you remember having any
24 discussions with him saying, Hey, it appears she's going
25 in this direction, do you want to go ahead and plead to

SARA HENRY-CROSS BY MR. ARIAIL

1 this so that you can get a better deal than being placed
2 on the trial docket?

3 A Well, yes, I do. And I think that's what he's
4 talking about when he's saying that I told him he wouldn't
5 get credit for his plea if he didn't go before. What I
6 was trying to tell him is that I believe that there are
7 certain cases that I think benefit from -- you can get
8 almost a better sentence at the end of trial. Once the
9 Judge hears all the facts, they get more familiar with
10 everything, I don't believe that Terry's case was one of
11 those. And I felt that the earlier that he pled the more
12 credit he would get for taking responsibility with the
13 court. I thought that pleading the morning of off the
14 trial docket would not be in his best interest, that he
15 would get -- that he would, perhaps, be in a better
16 position if he pled earlier and took responsibility for
17 it. And yes, the letter that I sent to him along with his
18 discovery in January outlined what I believe that he was
19 on the trial docket for, what everything carried and what
20 my recommendation would be.

21 Q And there was no discussion, I mean, no
22 disagreement that he was saying I'm guilty of a burg
23 second?

24 A No.

25 Q Okay. And--

SARA HENRY-CROSS BY MR. ARIAIL

1 A Well, Terry had gone back and forth. Terry's
2 original -- and I'm not sure how much I -- Terry's
3 original back and forth about what his defense would be
4 when we discussed this is that there would be -- he
5 fluctuated between, I just want a good deal to let's get
6 this taking care of, I'll take drug court, etcetera. And
7 I'm a good samaritan to a mysterious other individuals did
8 this. So, we had a series of very bazaar, hypothetical
9 conversations about what if two mysterious
10 African-American men had been in the store and done this
11 instead? It was just a very -- Terry was just trying to
12 work it out for himself the best way he could. Which is
13 completely understandable.

14 Q And I guess you had a discussion with him in
15 regards to a tape he had or a in-car video--

16 A Yes --

17 Q -- and you testified about that?

18 A Right. When they picked Terry up, Terry was
19 very forthcoming and was very friendly on the video on the
20 in-car video with the officers. And that's something that
21 Terry and I reviewed before the trial. And was another
22 reason why I felt that a trial would not be in his best
23 interest.

24 Q Okay. At any time during this -- I know Terry
25 had previously, I think either pled guilty or been

SARA HENRY-CROSS BY MR. ARIAIL

1 convicted of some other crime before this.

2 A Yes.

3 Q Was there any concern that you had that he
4 didn't understand what was going on, that he wasn't. . .

5 A No. Terry is very smart. Terry's got --
6 normally has got a great job. He's very together. He's
7 very well spoken. I was not worried about -- I mean,
8 Terry's very savvy. I was not worried that he didn't know
9 what was going on. I was sad that he had gotten here.
10 But not that he didn't understand what was going on.

11 MR. ARIAIL: Your Honor, I have no further
12 questions.

13 THE COURT: Any redirect?

14 MS. RATIGAN: No redirect and The State would
15 rest, Your Honor.

16 THE COURT: Thank you, Ms. Henry, you can step
17 down.

18 All right, anything further from the Applicant?

19 MR. ARIAIL: Nothing, Your Honor.

20 THE COURT: Okay, good enough. I'll take the
21 matter under advisement. I'll read the transcript of
22 record in full. I will issue an Order in fairly
23 short order.

24 MR. ARIAIL: Thank you, Your Honor.

25 THE COURT: Thank you, sir.

SARA HENRY-CROSS BY MR. ARIAIL

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Good luck to you, Mr. Campbell.

(WHEREUPON, the proceedings were concluded.)

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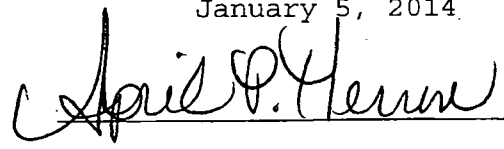
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of June, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 5, 2014



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Terry Douglas Campbell,)
 S.C.D.C. No. 281286,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-23-3703

ORDER OF DISMISSAL

2014 NOV 11 PM 4 20

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2013. The Respondent made its return on December 3, 2013. An evidentiary hearing was convened on June 19, 2014 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Sarah M. Henry, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate documents, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2012 term of the Greenville County Grand Jury for first-degree burglary (2012-GS-23-2101). He was represented by Sarah M. Henry, Esquire.

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RS9

On January 16, 2013, the Applicant pled guilty to second-degree burglary (violent). The Honorable G. Edward Welmaker sentenced Applicant to 100 months imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated May 1, 2013, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "I was sentenced on an indictment for first degree burglary. My sentence sheet reads burglary 2nd (X) lesser included offense 2nd (X) serious (X) violent."
 - a. "Under no conditions was this a first degree burglary. There was no weapons or explosives involved. I was not guilty of first degree burglary nor was this plea to a lesser included offense or serious."
2. "I was told as part of a plea bargain that I would be given credit for 249 days."
3. Ineffective assistance of counsel:
 - a. Counsel wanted him "to plea to 8 years" before he saw the discovery materials.
 - b. Counsel had him transported from the Spartanburg jail to the Greenville jail and told him he was going to plead guilty. The Applicant stated he would not do so because he had not seen discovery.
 - c. Counsel said the Applicant "must plea bargain before the trial date or 1/17/13. I did so on 1/16/13."

In a pro se document titled "Amendmant [sic] to PCR" filed October 10, 2013, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. Counsel "spoke to me on at least four occasions trying to get me to plea. [Counsel] told me that if I didn't plea, I would get 15 years."

- b. Counsel "failed terribly at properly representing me. [Counsel] seemed to be working harder for the prosecution than helping me. I told [counsel] multiple times that I had no intention of pleading."
 - c. Counsel "should have realized that the Indictment against me was no good. I feel quite sure [counsel] did realize this and this was her very reason for insisting that I plea."
2. "Pursuant to Rule 3 in the South Carolina Rules of Criminal Procedure, the indictment wasn't properly submitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59,

106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he met plea counsel while he was at the Greenville County jail but that he was sent to the Spartanburg County jail after one week. The Applicant stated plea counsel twice asked him to plead guilty before he saw his discovery materials. The Applicant stated plea counsel told him that he faced a life sentence but later corrected herself. The Applicant stated plea counsel eventually stated he would have to plead guilty by January 16, 2013 because the trial was set for the following day. The Applicant stated they never discussed first-degree burglary but that he ultimately pled guilty to second-degree burglary. The Applicant stated plea counsel did not provide a copy of his discovery materials until the week prior to the plea hearing. The Applicant stated he did not tell the plea judge because plea counsel said they would end up going to trial. The Applicant specified the indictment was faulty because of a violation of Rule 3(c), SCRCrimP.

Plea counsel testified the Applicant was charged with first-degree burglary, grand larceny and possession of burglary tools. Plea counsel testified she filed discovery motions, received those materials from the State, and reviewed them. Plea counsel testified the State's case was very strong because the Applicant was caught inside the building and the officer's in-car camera recorded the Applicant making very forthcoming statements. Plea counsel testified she reviewed the discovery materials with the Applicant in November 2012. Plea counsel testified she believed the Applicant when he said he did not receive the discovery materials so her staff sent a copy to him in January 2013. Plea counsel testified the State's plea offer was to reduce the first-degree burglary charge to second-degree and that they discussed that this offense was not actually a first-degree burglary. Plea counsel testified the assistant solicitor rejected the Applicant's request for drug court and also his request to dismiss the burglary charge so that he

could plead guilty to the grand larceny charge only. Plea counsel testified she met with the Applicant multiple times in January 2013. Plea counsel testified she relayed a plea offer from the State for the Applicant to plead guilty to second-degree burglary and dismiss the other charges. Plea counsel stated the Applicant wanted some time to think about it but that he later received a call from the Applicant's mother that he wanted to accept it.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court finds plea counsel properly conveyed all plea offers to the Applicant (and made counteroffers at his request). This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation and was thoroughly competent in her representation. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, pp.10-11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.6-10).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly meet with him to discuss the case. Plea counsel testified she had several meetings with the Applicant in both the Greenville and Spartanburg jails. Plea counsel testified they reviewed the discovery materials (eventually watching the in-car video) and that her staff sent a copy of the discovery to him after he stated he did not receive it. This Court finds plea counsel's testimony is credible. This Court notes the Applicant told the plea judge he had reviewed the evidence with plea counsel and was satisfied with her representation. (Plea transcript, pp.3-4; pp.9-10). This Court further finds the Applicant failed to demonstrate any prejudice that resulted

from not receiving his own copy of the discovery materials until January 2013. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding a PCR applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the indictment under Rule 3(c), SCRCrimP. “[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.” State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984). Further, this Court finds the Applicant failed to provide evidence of prejudice that resulted from any delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one’s speedy trial rights were violated).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11 day of April, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin Stilwell, Circuit Court Judge

Case No.2013-CP-23-03703

Terry Douglas Campbell,..... Appellant,
SCDC # 281286

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this August 15, 2014, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Terry Douglas Campbell SCDC# 281286
Livesay Correctional Institute
Post Office Box 580
Una, South Carolina 29378-0580

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck

Denise Tanner LaBeck
Paralegal to R. Mills Ariail, Jr.
LAW OFFICE OF R. MILLS ARIAIL, JR.

August 15, 2014

DOCKET NO. 2012-GS-23-002101
JRT
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2012

THE STATE

vs.

TERRY DOUGLAS CAMPBELL

Indictment for

0079

BURGLARY FIRST DEGREE

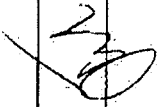
VIOLATION § 16-11-0311

WITNESSES

K.J. Azzara

Greenville County Sheriffs Office

2/21/2012



ARREST WARRANT NUMBER
M993018

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **JUL 31 2012** the Grand Jurors of Greenville County present upon their oath:

That TERRY DOUGLAS CAMPBELL did in Greenville County, on or about the 21st day of February 2012, willfully and unlawfully enter the building belonging to THE MOON BAR located at [REDACTED] School Road, Taylors, SC, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: that the defendant has two or more prior convictions for burglary. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR